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February 2, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Linda J. Dowling  
Cable Coordinator  
Town of Pelham  
Town Hall Annex  
60 Old Bridge Street North  
Pelham,  
New Hampshire 03076

RE: Subscriber Bill Line-Itemization

Dear Linda:

I am responding to your letter to me, dated January 14, 1993, regarding the September 19, 1992 letter from Harron Cablevision to its Pelham subscribers. In that letter, Harron informed its subscribers that commencing on November 1, 1992, it would start adding a new line-item on their bills called "Federal, State and Local Fees." In effect, this amounts to a rate increase. You stated that both Londonderry and Atkinson had successfully challenged a similar rate increase. You asked if the Town of Pelham could challenge Harron on the same grounds and demand refunds for Pelham subscribers. When we spoke on the telephone last Wednesday, I told you that I thought that Harron's new line-item was inappropriate for the following reasons and that a refund was an appropriate remedy for the Town to pursue.

First, as we discussed, Harron can rightfully only place a line-item equal to two and one-half percent (2.5%) of its gross annual revenues on its subscriber bills. That is the amount of the franchise fee payable to the Town pursuant to Section F, paragraph 7(b) of the Pelham Franchise Agreement. Harron informed its subscribers that it pays a five percent (5%) franchise fee to the Town of Pelham. *This is incorrect and misleading.* The other 2.5% payment, pursuant to Section F, paragraph 8(e) of the Franchise Agreement, is for "local program origination." According to Section 622(g)(2)(B) of the Cable Communications Policy Act of 1984 (the "Cable Act"), this 2.5% programming fee is *not* considered to be part of a franchise fee. According to the Cable Act, the term "franchise fee" does not include:

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in the case of any franchise in effect on the date of the enactment of this title, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational or governmental access facilities

Because the Pelham Franchise Agreement was in effect on the date of enactment of the Cable Act (October, 1984) and because Section 622(g)(2)(B) of the Cable Act, in effect, "grandfathers" any existing requirements for support of PEG access programming from being part of a franchise fee, ~~Herron cannot claim that the 2.5% payments for local programming~~

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There are a couple of additional problems with Harron's new line-itemization. First, the new itemization clearly amounts to a rate increase. However, based upon the September 19, 1992 letter to its subscribers, which is all I have seen, Harron has not been particularly forthright about this. Instead, it "cloaks" the rate increase as a line itemization. In a number of other communities, operators have broken out franchise fees, etc. However, in doing so, the operators would simultaneously *decrease* the amount of Basic Service. Thus, in your case, they would have decreased the amount of Basic Service by the line-item amount-Ie:  $\$20.50 - \$1.19 = \$19.31$ , which would be the new listed price of Basic Service. In Pelham, Harron has kept the price of Basic Service the same, while listing franchise fee payments on top of that. I will check to verify that Harron has complied with statutory notice requirements, etc.

Second, Harron calls the line-item "Federal, State and Local Fees." However, as far as I know, there are no State fees imposed on operators. Additionally, as I mentioned before, they are including PEG Access Fees as part of this line-item, which is inappropriate. Therefore, the caption itself is incorrect and misleading. While Harron may have the right to add certain line-items, those line-items must be accurately computed and labeled.

I have enclosed a letter that should be sent to Harron either by, or on behalf of, the Board of Selectmen as Franchising Authority. As you can see, it states that the new line-item is incorrect and misleading and that Harron must rebate to each subscriber any amounts in excess of 2.5% of their total bill, effective with the November 1992 bills. It should be sent to Harron as soon as possible via Certified Mail, with copies to all of the people that I noted on the draft letter.

Finally, I mentioned that the FCC is currently reviewing the rate-regulatory provisions in the 1992 Cable Act including the subscriber line itemization. It would be useful for the Board of Selectmen to respond to the FCC with information on how some operators appear to be taking advantage of the line-itemization, including adding some charges that may well be inappropriate. Reply comments to the FCC are due by February 11, 1993.

If you have any questions about the enclosed letter or the discussion herein, please give me a call.

Very Truly Yours,  
  
Peter J. Epstein

PJE/p  
Enclosure